IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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(1) CIVIL MISC. APPEAL No. 469 of 1994

BHANWAR LAL & ANR.
V/S
UNION OF INDIA & ORS.

(2) CIVIL MISC. APPEAL No. 429 of 1994

KANWAR RAM
V/S
UNION OF INDIA & ORS.

(3) CIVIL MISC. APPEAL No. 430 of 1994

BAXI RAM & ANR.
V/S
UNION OF INDIA & ORS.

(4) CIVIL MISC. APPEAL No. 442 of 1994

MADHU RAM
V/S
UNION OF INDIA

(5) CIVIL MISC. APPEAL No. 444 of 1994

CHAINA RAM
V/S
UNION OF INDIA

(6) CIVIL MISC. APPEAL No. 445 of 1994

SHAITAN RAM
V/S
UNION OF INDIA

(7) CIVIL MISC. APPEAL No. 446 of 1994

BAKSHI RAM
V/S
UNION OF INDIA

(8) CIVIL MISC. APPEAL No. 464 of 1994

GANESH RAM & ANR.
V/S
UNION OF INDIA & ORS.

(9) CIVIL MISC. APPEAL No. 465 of 1994

LALA RAM & ANR.
V/S
UNION OF INDIA & ORS.

(10) CIVIL MISC. APPEAL No. 470 of 1994

PRABHU RAM
V/S
UNION OF INDIA & ORS.

(11) CIVIL MISC. APPEAL No. 471 of 1994

CHUNI LAL
V/S
UNION OF INDIA & ORS.

(12) CIVIL MISC. APPEAL No. 472 of 1994

SUMER CHAND
V/S
UNION OF INDIA & ORS.

(13) CIVIL MISC. APPEAL No. 473 of 1994

GIRDHARI & ORS.
V/S
UNION OF INDIA & ORS.

(14) CIVIL MISC. APPEAL No. 474 of 1994

SONA RAM
V/S
UNION OF INDIA & ORS.

(15) CIVIL MISC. APPEAL No. 482 of 1994

MEH RAM & ANR.
V/S

UNION OF INDIA & ORS.

(16) CIVIL MISC. APPEAL No. 485 of 1994

MANGLA & ORS.
V/S
UNION OF INDIA & ORS.

(17) CIVIL MISC. APPEAL No. 488 of 1994

RUGHA RAM & ORS.
V/S
UNION OF INDIA & ORS.

(18) CIVIL MISC. APPEAL No. 500 of 1994

GOPA RAM
V/S
UNION OF INDIA & ORS.

Mr. JR BENIWAL and Mr. VIKAS BALIA, for the appellant

Mr. RAVI BHANSALI and Mr. V.K. MATHUR, for the respondent

Date of Order : 13.8.2007

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

These 18 appeals have been filed by different appellants, who shall hereafter be collectively addressed as land losers, under Section 11 of the Requisition and Acquisition of Immoveable Property Act, 1952, hereafter referred to as the Act, seeking to challenge the award, passed by the learned Arbitrator dt. 6.6.1994, determining compensation and other amounts payable to all the land

losers, including the appellants, with respect to lands, acquired under the Act.

Before proceeding further it may be observed, that there had been numerous litigations, in this regard, including more than one rounds of litigation, and also including one round to Hon'ble the Supreme Court. Those litigations were initiated by different land losers, sometimes individually, sometimes by couple of persons, and some of those litigations include some litigation initiated by some of the present appellants as well, like appellants in Appeal No. 445, 471, 473, and 482 to be precise.

Facts of the cases are, that sizeable amount of agricultural land, measuring about 981 acres in all, situated in different villages, viz. Jajiwal, Jajiwal Khichiya, Jajiwal Kankrala, Jajiwal Bhandariya, Jajiwal Katudi, and Jajiwal Kala, in Jodhpur district, was initially taken on rent for defence purposes, rent whereof was paid upto 31.3.1987, and subsequently this land was acquired by issuing appropriate notification under the Act, somewhere in October, 1987, and the competent authority being the District Collector fixed the compensation at the rate of Rs. 3850/- per Bigha for the land, and also determined separate compensation for the structures, trees etc.

It may be observed here that before this order of the Collector, there did happen to come into existence a document dt. 28.9.1989. This document dated 28.9.1989 purports to record the fact, that on 28.9.1989 there was a meeting, attended by five authorities mentioned therein, apart from the leading land cultivators, with whom the matter was discussed, and the report of the Tehsildar dt. 29.7.1989 was perused, regarding price of the land. It was then noticed, that the Assistant Defence Estate Officer informed, that the price of the land demanded by the cultivators, being Rs. 10,000/- per Bigha, is excessive. However, the report of the Tehsildar was again seen, and the price of the land was determined at Rs. 7,000/-, and it was also recorded, that no interest, or solatium, shall be paid, and the Tehsildar was supposed to prepare a statement, as to what precise amount is payable to each of the cultivator, and submit before the Assistant Defence Estate Officer within 7 days. It was also mentioned that the compensation for trees, water channels, structures etc. shall be separately determined, and in this regard also statement shall be submitted within 15 days. Then, it was mentioned, that the Assistant Defence Estate Officer was of the view, that the price of the land is to be determined by the Defence Department, which would take time, and therefore, as an interim measure Rs. 1000/- per Bigha can be paid, by way of interim compensation, while making this payment, the concerned cultivator shall have to submit an

agreement in Form-L. It was then mentioned that the Assistant Defence Estate Officer informed, that on 9.6.1989 a sum of Rs. 21 lacks have been deposited, from out of which above amount can be paid, therefore, it was directed, that the amount be transferred to the account of the Tehsildar. Then, in the next para it was noticed, that the cultivators were of the view, that one member from each family should be given appointment in 17 FAD, so that their families can be maintained, and it was decided, that this matter shall be separately pursued. Then, it was noticed, that the meeting was concluded with the vote of thanks, and the copy of the order was directed, to be sent to Tehsildar and Assistant Defence Estate Officer, Jodhpur for necessary action. This document was there on record before the learned Arbitrator as Ex.A-2.

In order to avoid all controversies, I think it appropriate to quote the document as such, which reads as under :-

> "आज दिनांक 28.9.1989 को इस मामले में बैठक हुई जिसमें निम्नलिखित अधिकारीयों ने भाग लिया:-
>
> 1. अतिरिक्त जिला कलेक्टर, जोधपुर
> 2. सहायक रक्षा सम्पदा अधिकारी, जोधपुर
> 3. उपखण्ड अधिकारी, जोधपुर
> 4. तहसीलदार, जोधपुर
> 5. सरपंच, ग्राम पंचायत जाजीवाल कलॉ
>
> उक्त अधिकारीयों/पदाधिकारीयों के अलावा गॉव के मौजिज काश्तकार भी उपस्थित हुये जिनसे विचार विमर्श किया गया। भूमि की कीमत के बारे में तहसीलदार, जोधपुर को रिपोर्ट दिनांक 29.7.89 को देखा गया। सहायक सम्पदा अधिकारी, जोधपुर ने बताया की भूमि की कीमत की माँग

काश्तकारों को 10,000/- दस हजार रूपये प्रति बिघा दिया जाना उचित नही है। तहसीलदार, जोधुर के प्रतिवेदन को पुन: देखा गया एवं भूमि की कीमत समस्त अवास किये जाने वाले भाग हेतु प्रतिबिघा 7,000/- सात हजार रूपये निर्धारित की जाती है। यह भूमि की कीमत काश्तकारों को चुकाते समय ब्याज, सोलिसियम राशि अलग से नही दी जायेगी। भूमि की कीमत किस काश्तकार को कितनी देय होगी इसके बारे में विवरण तहसीलदार, जोधपुर व सहायक रक्षा सम्पदा अधिकारी, जोधपुर 7 दिन में तैयार कर पेश करेगें। भूमि की कीमत के अलावा मौके पर पेड़ों, धोरे पाली, पक्के व कच्चे निर्माण की कीमत का मूल्यांकन अलग से किया जायेगा। जिस बाबत ब्यौरा भी उक्त अधिकारी 15 दिन की अवधि में पेश करेगें। जैसा कि पूर्व में भूमि किराये पर लेते समय विवरण तैयार किया गया था।

सहायक रक्षा सम्पदा अधिकारी, जोधपुर का यह मत था कि इस भूमि दर का निर्धारण रक्षा विभाग से करवाया जायेगा जिसमें समय लगेगा ऐसी स्थिति में काश्तकारों को प्रति बिघा 1,000/- रूपये की दर से आंशिक भुगतान किया जा सकता है जिसको भुगतान करते समय इकरारनामा प्रपत्र ए॰ल मे संबंधित काश्तकार को पेश करना होगा। सहायक रक्षा सम्पदा अधिकारी, जोधपुर ने बताया कि इस मामले में संबंधित 9.6.89 को 21 लाख की राशि जमा करवाई गई जिसमें से यह आंशिक भुगतान देय किया जा सकता है। अत: यह राशि तहसीलदार, जोधपुर को पी.डी. खाते से तीन दिन में हस्तांतरण की जावें।

काश्तकारों का मत था कि उनके परिवार के एक एक युवक को 17 एफएडी में नौकरी दिलवायी जावे ताकि परिवार का गुजारा चल सके। इस बारे में अलग से कार्यवाही करने का निर्णय लिया गया।

अंत में बैठक सधन्यवाद समाप्त की गई। इस निर्णय की प्रति तहसीलदार, जोधपुर व सहायक सम्पदा अधिकारी, जोधपुर को आवश्यक कार्यवाही हेतु भेजी जावें।

28.9.89
जिला कलेक्टर, जोधपुर"

(Since the original Ex.A-2 available on record is in seriously damaged condition, therefore, I have ventured to copy it out, as is available in file of S.B. Civil Writ Petition No. 5455/1991, decided on 17.7.1992, which was filed by the appellant in Appeal No. 445/1994, as Annexure-3)

It appears from the order of the learned Collector, which was made on 18.12.1991, copy whereof was

made available to me by the learned counsel for the appellant, which document is not a disputed one, that after Ex. A-2 noticed above, the matter was referred to the Defence Department, and the Revenue Department of the State, whereupon the Defence Ministry fixed the price of the land at Rs. 3850/- per Bigha, and communicated it vide communication dt. 26.6.1991. Thereafter notices were given to the land losers on 25.10.1991, calling them upon to intimate, as to whether they are agreeable to aforesaid compensation, or not, and in the event of being not agreeable, he should submit complaint with reasons in quadruplicate.

However, before this intimation could be given, some of the land losers filed separate writ petitions before this Court, praying for direction to the Union of India to pay compensation @ Rs. 7,000/- per Bigha. This lot of writ petitions included the aforesaid Writ No. 5455/1991, wherein on 25.10.1991 interim order was made, to make payment in compliance of the order dt. 16.5.1991, passed in Writ Petition No. 4814/1990. Thereafter, on 22.11.1991, another order was passed in Writ Petition No. 5456/1991 Nena Ram Vs. Union of India, noticing the contention of the learned counsel for the respondent that they are prepared to make payment without prejudice.

Then, it is mentioned, that after notice of the

Collector, the persons detailed at page-4 filed reply to the notice, and it was considered, that in view of the orders of this Court dt. 25.10.1991, and 22.11.1991, the land losers should be paid compensation @ 3850/- per Bigha, and also requested for appointment of Arbitrator. Then, the present Ex.A-2 was considered, and it was noticed, that the land losers had been requesting for making payment of compensation at the rate of Rs. 10,000/- per Bigha. However, in view of the fact, that the price has been determined by the Defence Department, which cannot be altered, therefore, it was decided, that the matter should be sent for appointment of arbitrator, and meanwhile aforesaid payment be made.

It may be observed here, that aforesaid bunch of writs led by Civil Writ Petition No. 5455/91 was decided by this Court on 17.7.1992, and it was directed therein, that the respondent no. 1 should appoint an arbitrator under Section 8(1)(d) of the Act within three months, and the respondents will not take any adjournment in the proceedings, to be held before the arbitrator, and the respondents were further directed to make payment of the 20% of the amount mentioned in notice Annexure R/1, within three months from that date, adjusting the amount already paid, which will be adjustable in the final amount payable to the petitioner.

Accordingly, the State Government vide order dt. 23.11.1992, appointed an arbitrator, exercising powers under Section 8 of the Act, for determination of compensation.

Claims were filed before the arbitrator by the land losers, claiming that the land in question is very fertile, and capable of producing double crop. It was also pleaded that the land is in the vicinity of city of Jodhpur, well connected by rail and road, and that at present the price of the land is ranging between 40000 to 500000 per Bigha, and in April, 1987 prices were not less than Rs. 20,000/- per Bigha, and therefore, the compensation was claimed @ Rs. 20,000/-.

In reply the Assistant Defence Estate Officer submitted, that compensation awarded @ Rs. 3850/- per Bigha is very reasonable, and that, in the writ petitions (bunch of Writs lead by 5455/91), the land losers themselves submitted, that compensation @ Rs. 7000/- be awarded, and, therefore, they are estopped from asking for higher price. It was also contended, that no amount can be awarded by way of solatium, and interest, under the Act.

The learned Arbitrator framed five issues. Issue no. 1 was, as to whether the land losers are entitled to claim compensation @ Rs. 20,000/-. Then, issue no. 2 was

about entitlement to get solatium and interest at the rate of 30% and 15% respectively. Then, issue no. 3 was, as to whether the Khatedars are entitled for compensation of standing trees, water courses etc. Then, issue no. 4 was as to whether, the Khatedars having demanded Rs. 7,000/- per Bigha in the writ petition, they cannot be awarded any excess amount.

The land losers examined five witnesses, including Tehsildar, while the respondent examined Shri S.K. Bhatnagar, Assistant Defence Estate Officer himself. The learned Arbitrator discussed the evidence of all the five witnesses in detail, so also of Shri Bhatnagar, and various documents produced on the side of the parties, were also considered. The above document Ex.A-2 was considered, as showing, that initially land owners were of the view, that the land was worth Rs. 10,000/- per Bigha, but after perusal of the report of Tehsildar, that the land was worth Rs. 7,000/- per Bigha, and that, the land owners were keen that at least one youth of each family should be employed in 17 FAD, but no such agreement is contained in Ex.A-2. It was considered, that according to Bhanwarlal, and Mehram such assurance was given by the Collector, while Bakshiram says that there was written assurance, but none has been produced. Then, it was noticed that the land owners filed writ petitions (obviously, the bunch of Writ Petitions led by 5455/91), and therein this contention about employment

to one member from each family was not raised. Thus it was found, that even from Ex.A-2, it shows the land owners themselves assessed the value of the land at Rs. 10,000/- per Bigha, and therefore, the claim now laid for compensation to be Rs. 20,000/- is clearly afterthought. Then various documents produced were considered, and it was held at page 10, that after taking into consideration, the fact that the land is situated in the vicinity of the city of Jodhpur and near the high way going from Jodhpur to Jaipur, and near the Railway Stations Banar and Jajiwal, in the opinion of Arbitrator, the prevailing rate, at the relevant time, was Rs. 7,000/- per Bigha. It was also observed, that during the course of argument it was brought to the notice of the Arbitrator, that in the Writ Petition No. 4814/90 Ghamandi Ram Vs. Union of India, this Court vide order dt. 16.5.1991, on the basis of Ex.A-2, found, that there was an agreement between land owners and the Collector, to the effect that the compensation may be paid at the rate of Rs. 7,000/- per Bigha. It was noticed, that the relevant portion of the judgment reads, that vide Annexure-2 the Committee had considered the report of the Tehsildar, and after agreement, the compensation was fixed at the rate of Rs. 7,000/- per Bigha. Then, it was noticed that it is admitted position, that Ex.A-2 has been mentioned as Annexure-2 in the aforesaid writ petition. It was also noticed, that the first three witnesses of the land owners have admitted, that there was an agreement, to

the effect, that the compensation shall be paid and received @ Rs. 7,000/-. However, subsequently the Collector unilaterally reduced the amount to Rs. 3850/- per Bigha. Therefore, it was held, that if the land owners are bound by the amount, which was arrived at, on the basis of the report of the Tehsildar, the other side is also bound by the same, and it was held, that the land owners are entitled to compensation @ Rs. 7,000/- per Bigha. Then, deciding issue no. 2, relying upon the judgment of Hon'ble the Supreme Court, in Rao Narain Singh Vs. Union of India, reported in 1993 L.A.C.C.-292 (AIR 1993 SC-1557), it was held, that the land owners are entitled to solatium @ 10%, and interest @ 4% p.a. Then, deciding issue no. 4 it was found, that in the writ petition the owners themselves claimed compensation @ Rs. 7,000/- per Bigha, and as found while deciding issue no. 1, that this is the reasonable compensation, according to prevalent rates, the land owners cannot get more than that. Accordingly award is made. The decision of the learned arbitrator on issue no. 3 need not be narrated, as the finding on that issue were not challenged before me, by the learned counsels.

Assailing the impugned award, it is contended, that a bare look at Ex.A-2 shows, that this is not an agreement at all, it only purports to record as to what transpired in the meeting, and in the alternative, even if it is read as it is, therein there is no mention at all,

about the appellants having agreed for compensation @ Rs. 7,000/-, rather the document purports to show, that the compensation was claimed @ Rs. 10,000/- per Bigha, but the Collector held the appellants to be entitled to compensation @ 7,000/- per Bigha, and forwarded the matter to the competent authority for determination of the price of the land. In that view of the matter, according to the learned counsel, learned Arbitrator could not take this document Ex.A-2, as an agreement on the side of the appellant, to take compensation @ Rs. 7,000/- per Bigha. It was then submitted, that had it been the agreement, there was no question of any arbitrator having been got appointed. Obviously, therefore, even the respondents have not challenged the appointment of the arbitrator, or the arbitration proceedings, on the ground of Ex. A-2 being the agreement, so that no further arbitration was required. Then, it was submitted that all these aspects were considered vide judgment dt. 17.7.1992, passed in the bunch of writ petitions led by writ petition no. 5455/1991, and direction was given to appoint arbitrator. It was also submitted, that even the respondents did not stand by Ex.A-2, and the learned Collector, vide order dt. 18.12.1991 fixed the compensation at the rate of Rs. 3850/- per Bigha. The next submission made was, that the appreciation of evidence made by the learned Arbitrator is not correct, inasmuch as, the appellants have proved by evidence of P.W. 1 to 4, that the price of the land, at the relevant time,

was Rs. 20,000/- per Bigha, and from the voluminous documents produced before the arbitrator also it is more than clearly established, that price of the land was not less than Rs. 20,000/- per Bigha. It was also submitted, that if it is found, that from the evidence led on the side of the appellants it is not established that the price of land was not less than 20,000/- per Bigha, even in that event, since there is no evidence on the side of the respondents either, to show, that the price of the land was Rs. 7,000/- per Bigha, the determination of price is arbitrary, and in view of the judgment of Hon'ble the Supreme Court, in Union of India Vs. Banwari Lal, reported in (2004) 5 SCC-304, the matter is required to be remanded to the learned Arbitrator. Then it was submitted, that the award of solatium and interest is grossly inadequate, and relied upon the judgment of Hon'ble the Supreme Court dt. 7.4.2005, passed in Civil Appeal No. 1710/2001, Girdhari & Ors. Vs. Union of India (one of the land losers who is not the appellant before me) to contend, that therein Hon'ble the Supreme Court had awarded interest @ 9% per annum, and therefore, it was prayed, that instead of solatium and interest, as awarded, at least 9% interest should be awarded.

Learned counsel for the respondents, on the other hand, supported the award, and submitted, that the learned Arbitrator has not proceeded only on the basis of Ex.A-2,

but after appreciating the entire evidence himself, has come to the conclusion, that the price of the land, at the relevant time was Rs. 7,000/- per Bigha. This is a categoric conclusion, arrived at, at page 10 of the award, and thereafter has additionally considered Ex.A-2, and the recitals in the judgment dt. 16.5.1991, passed in Writ Petition No. 4814/90, Ghamandi Ram Vs. Union of India, but then, the finding recorded at page-10 is independent finding, duly supported by valid reasons, and does not require any interference. It was also submitted, that the witness P.W.4, on whom much reliance is placed by the appellant himself, has also not challenged the award. Learned counsel also invited my attention to various aspects of the evidence of the appellant, to contend, that the evidence, as led, is not at all reliable, as it gives a highly exaggerated version, as various things have been deposed, which are ex-facie wrong, like all the lands being black soil, capable of rendering two crops, being irrigated, and so on and so forth. Then, it was submitted that the learned Arbitrator has rightly considered, that even in Ex.A-2 the land losers themselves had claimed compensation @ Rs. 10,000/-, which too was highly exaggerated, and therefore, when Arbitrator has found price @ Rs. 7,000/- per Bigha, no fault can be found in that finding.

I have considered the submissions, and have gone

through the record. At the out set, without meaning anything much serious, it may be noticed, that in the claim filed by the land losers before the Arbitrator, in para-3 at page-5 it has been mentioned as under:-

> "यहां यह उल्लेखनीय है कि समझौता दिनांक 28.9.89 किये जाने के समय सुरक्षा विभाग के पास सिर्फ रू. 21,00,000/- जमा थे, इस कारण से पूरी राशि का भुगतान नहीं किया गया था। काश्त कारान द्वारा समय समय पर सक्षम अधिकारी को प्रतिवेदन प्रस्तुत कर मुआवजा की राशि भुगतान करने का निवेदन किया गया।"

One only needs to comprehend, as to how the appellants were taking the document Ex.A-2.

I have gone through the record, unmindful of scope of interference, in my appellate jurisdiction, and have appreciated the evidence, independently, over again.

A look at the statement of A.P.W.1 Bhanwarlal shows, that he has deposed, that in 1987 thousands of houses were constructed on the land in question, this land was fertile, inasmuch as in one crop it was producing wheat, Bengali gram, while in the other crop it was growing Mung, Moth, and Bajari etc., and the houses constructed are equipped with the facilities of road, water and electricity. Then, it was deposed that in 1987 the price of land was Rs. 20,000/- per Bigha, and this price was

demanded, whereupon the Collector gave out, that one member of each family would be given appointment in the depot, and a sum of Rs. 7,000/- per Bigha will be paid as compensation. However, employment was not given, therefore, they should get compensation at the rate of Rs. 20,000/- per Bigha. Then, it was deposed that Jaipur-Jodhpur road, petrol pump, railway station, bank, hospital, secondary school etc. are there in the vicinity, and in the neighborhood hundreds of houses have been built. Then, it is deposed that near the railway station Banar, a plot of land measuring 30 x 40 ft. costs Rs. One Lac. Then, the award passed by the Housing Board, regarding the land acquired for Kudi Bhagtasani was produced. Then, it is deposed that as on the date, the price of the land is at least Rs. 50,000/- per Bigha, the land is plain, and having back soil, and is very fertile. Then, in cross-examination it is admitted, that when the land was given on rent, there was no well, nor any electricity supply was there, and he has denied the suggestion about having demanded the price of land as Rs. 7,000/-. Then, he has admitted that there is no sale deed showing the price to be Rs. 50,000/- per Bigha, as there is no land available. Then, so far A.P.W.2 Bakshi Ram is concerned, he was the then Sarpanch, and was present in the meeting, and has deposed, that Rs. 20,000/- per Bigha were demanded, and assurance was given to give employment to one member of the family, and to make payment immediately, therefore, looking to the then prevailing

circumstances, the price of Rs. 7,000/- per Bigha was agreed. Then he has deposed, that after 1981, on account of conversion of land into Abadi, the prices have increased, and near the land in question the railway stations of Banar and Jajiwal are situated, and both the stations are densely populated, and that Jodhpur is number two biggest city of Rajasthan. Then he has deposed about the land acquired by Housing Board in Kudi Bhagtasani, and other lands acquired for establishing bye-pass. Then he has proved the registered sale deed Ex. 138, whereby 3 Bighas and 4 biswas of land was sold for Rs. 55,000/-. It may be observed, that this sale deed is of the year 1991. Then, in cross-examination he has deposed, that Rs. 20,000/- have been claimed as price of the land, prevalent at that time, and has deposed that in the Registration Department lesser price is shown, and admitted this version to be hearsay. Then, he has deposed that 7,000/- रूपये प्रतिबिघा जिलाधिश को आधार बनाकर मांगा गया था. Then he has deposed, that no contention was raised about giving employment to one of the members of the family. Then it is deposed, that price deposed by him is on the basis of his conjectures (अंदाज). Then, so far as A.P.W.3 Mehram is concerned, he has deposed to have been Sarpanch during the period 1965 to 1977. During this period the depot was established, and that, six years ago there was thick population near the depot, and about 1000-1100 workers are working in the depot. Then he has deposed, that

the land is situated between the railway stations Banar and Jajiwal, and is near the road leading from Jodhpur to Jaipur, and Bhopalgarh. Then he has deposed, that in 1987 the price of the land was @ Rs. 20,000/-. With this he has further deposed, that in 1979 there was a meeting with the Collector for settlement, wherein he represented, and demanded Rs. 20,000/-, but the Collector gave out, that one member from family, and Khatawise, shall be given appointment, therefore, a settlement was arrived at, at the rate of Rs. 7,000/-. In cross-examination he has deposed, that the basis of the price claimed is the registry, which is for Rs. 17,000/-, but then has deposed to be not aware as to, to which year the registry relates. Then comes A.P.W. 4 Ramu Ram. According to him his ancestors have been living in Jajiwal Khichiya for the last 500 years, he was born in this village. Then, according to him there are ten schools upto 5th Standard, and a big water reservoir is constructed by the state, which is maintained by the state, wherefrom water is supplied upto 10-15 miles, and subsoil water is sweet. Then, according to him on one side of the land there is Banar Railway Station, while on the other side is Jajiwal Railway Station. He has proved, the sale deeds Ex. 138 and 139. Ex.138 relates to plot nos. 46A and 46B, which was sold after due conversion, and relates to the year 1993. Then, he has stated, that Khasra No. 68 was sold for Rs. 10,000/- measuring half Bigha. Then he has also proved certain more sale deeds, relating to the

converted plots. In cross-examination he has deposed, that the reservoir is not used for irrigating the agricultural lands, water is not supplied by the state, but the people take it themselves, and that, in the land acquired there was one well. Then he has deposed, that he himself had purchased the land taken in the depot, at a price of Rs. 19,000/-, but registration was got done at the rate of Rs. 150/- per Bigha, which land is comprised in Khasra no. 156 at village Jajiwal Takrala. So far A.P.W.5 Tehsildar is concerned, his evidence, in my view, is not of much significance, as he has deposed far beyond the appellants, and their witnesses themselves. Of course, N.A.P.W. 1 S.K. Bhatnagar has not deposed as to what was the price of the land at that time, but then, he has deposed something about the things as were prevalent at the relevant time, by deposing, that there were only 15-20 shops, and after the land was taken Abadi came up on the road side, and that, in Ex. A-2 it was never agreed, that any employment shall be given.

After recapitulating the evidence as above, I went through the revenue records, copies whereof have been produced, which show, that entire land was only Barani, some of which was Barani of Ist category, some of which was of second category, and so on, and learned counsel for the appellant did not point out to me any revenue record, to show, that the land was yielding more than one crop a year,

or was of any better soil quality. Though, of course, it has been deposed, as noticed above, by some of the witnesses, that the land has black soil, and yields two crops a year. It is obvious, that all these things have been deposed, only to impress the authority, about arriving at a higher figure of the price of the land, but then, if the soil quality is not that one, and is only Barani, obviously, much of the part of the consideration, attempted to be introduced, for inflating the figure of price, is gone away.

Thus, to be very precise, and very categoric, there is no reliable evidence on record, on the side of the claimants appellants, to believe safely, that the price of the land, at the relevant time, was Rs. 20,000/- per Bigha. It is also at the same time true, that there is no evidence on the side of the respondent, as a counter version in evidence, to show as to what was the price of the land at the relevant time.

In this situation, learned counsel for the appellant relied upon the judgment of Hon'ble the Supreme Court in Banwarilal's case, and prayed that the matter be remanded to arbitrator, for appropriate re-consideration. However, since the parties had sufficient opportunities to lead evidence, and it is not the grievance of any of the parties, that they were not afforded sufficient opportunity

to lead evidence, oral or documentary, in that view of the matter, for all practical purposes, if the matter is to be remanded, it would be only for the re-appreciation of evidence, and re-writing of the judgment, while in view of the provisions of O. 41 Rule 24 C.P.C., this Court also has the power, and is rather expected, to avoid the remand, and decide the matter itself. This, coupled with the fact, that the acquisition, in the present case, is of the year 1987, and award is also as old as 1994, so, even after award 13 years have rolled by, and there had been a spate of litigation, right upto Hon'ble the Supreme Court. All these considerations persuade me to desist from remanding the matter back, and persuade me to decide the matter on merits by myself. And in order to avoid further delay, I have erring against myself, re-appreciated the entire evidence, anew.

In view of the above, now the question required to be considered by me is, as to whether the compensation of Rs. 7,000/- per Bigha, as assessed by the Arbitrator, is proper, or the appellants are entitled to compensation at the rate of Rs. 20,000/- per Bigha, or any lesser amount between Rs. 7,000/- to 20,000/-.

As noticed above, the main contention to challenge the award was, that the Arbitrator has proceeded, treating Ex.A-2 to be an agreement, which it is not. I have

already reproduced Ex.A-2, and have no hesitation in concluding, that on the language of the document, it does not purport to be an agreement, rather it purports to be the minutes of the meeting, held on 28.9.1989, and recites, that the cultivators demanded the compensation @ Rs. 10,000/- per Bigha, while according to the Collector, the price was assessed at Rs. 7,000/- per Bigha, and the final determination of the price was to be made by the Defence Department.

It is significant to note, that it is not in dispute, rather it is admitted by some of the appellants' witnesses, that the meeting was held, and some of the witnesses, appearing before the Arbitrator, were present there in the meeting, as representative of the cultivators, and significantly, it is not the contention, or evidence, and in any case no reliable material is there to show, that the cultivators demanded compensation at the rate of Rs. 20,000/- per Bigha, or demanded any higher amount. Of course, it is deposed by some of the witnesses, that they demanded Rs. 20,000/- per Bigha, and in view of the assurance to give employment to one member in each family, they agreed for compensation of Rs. 7,000/- per Bigha, but then, they have not assailed, or disowned the recitals in Ex.A-2. In that view of the matter, I have no hesitation in coming to the conclusion, that even according to the land losers, the price of the land was not Rs. 20,000/-, as

claimed, rather it did not exceed Rs. 10,000/- per Bigha.

In this sequence, as is clear from the evidence of A.P.W. 1, 2 and 3, that in the meeting, they agreed for a compensation of Rs. 7,000/- per Bigha. Of course, according to the witnesses, that agreement was in view of the fact, that some more assurances were given, which were not adhered to, but then, the fact does remain, that they agreed for receiving compensation, at the rate of Rs. 7,000/- per Bigha.

This being the position, the question, that requires to be considered is, as to whether any such assurances were given on the side of the respondents, on account of which, the land owners agreed for a compensation of Rs. 7,000/- per Bigha. Suffice it to say, that in Ex.A-2 there is no such assurance, rather it is observed therein, that separate proceedings will be taken for the purpose of giving employment. Then, so far oral evidence, led on behalf of the appellants, is concerned, the evidence is thoroughly discrepant, inasmuch as, one witness says that it was orally agreed, while the other witness says, that it was agreed in writing, while no writing is there in Ex.A-2, nor any other writing has been produced before the arbitrator. A bare reading of statement of N.A.P.W.1 shows, that nothing about any of the alleged assurance, has been suggested to him in the cross-examination, though he was

cross-examined. Significantly, in various writ petitions filed from time to time, by different persons, including some of the appellants, before this Court also, there is not even a whisper about any of the claimed assurance, to have been given by anyone, on behalf of any of the respondents. Not only this, even in the claim petition, filed before the learned Arbitrator, there is no whisper about any such assurance to have been originated on the side of the respondents, rather it has been pleaded, that at the time of settlement (Samjhota) funds were not available with the authorities, and therefore they were representing again and again that the payment be made. Thus, considering from all stand points, I do not find any reasonable ground, to believe, that any such assurance was given to any of the land owners, on account of which they were persuaded to agree to the compensation of Rs. 7,000/- per Bigha.

In this background again, what is significant to note is, that as found above, that Ex.A-2 is not an agreement, but is only memorandum of minutes of the meeting, wherein the land owners proposed or demanded compensation of Rs. 10,000/- per Bigha, while after considering the Tehsildar's report, the Collector determined the compensation at the rate of Rs. 7,000/- per Bigha, but then, as is clear from the statement of A.P.W.1, 2 and 3, that they have clearly deposed, that the

compensation of Rs. 7,000/- per Bigha was agreed on behalf of cultivators. This leaves no manner of doubt, that irrespective of form and content of Ex.A-2, it is admitted on the side of the appellants, that in the meeting of 28.9.89, the compensation at the rate of Rs. 7,000/- per Bigha was agreed. Unfortunately, the report of the Tehsildar has not been brought on record, which might have thrown some light on the question of price of the land at the relevant time, but then in view of the fact, that in Ex.A-2 it is recited, that the land owners demanded Rs. 10,000/- per Bigha, and the learned Collector determined compensation @ Rs. 7,000/- per Bigha, considering the report of the Tehsildar, I am left to conjecture, that the Tehsildar's report must not have reported the price of the land at the relevant time to be more than Rs. 7,000/- per Bigha. If it would have reported the price of the land to be more than Rs. 7,000/- per Bigha, at the relevant time, then the representatives of the appellants would have very well stressed on the Collector to agree to the report of the Tehsildar.

In view of the above, if the learned Arbitrator, after considering the evidence of the parties, has found at page 8 and 9, to be unable to accept the contention about rates to be Rs. 20,000/- per Bigha in the year 1987, and that, from Ex.A-2 it comes out, that the land owners themselves assessed the value of the land at Rs. 10,000/-,

and are now claiming Rs. 20,000/-, and then at page-10 found “After taking into consideration the fact that the land is situated in the vicinity of the city of Jodhpur and near the high way going from Jodhpur to Jaipur and near the Railway Station 'Banar' and 'Jajiwal', in my opinion, the prevailing rate at the relevant time was Rs. 7,000/- per Bigha”, this finding requires no interference, as even after considering entire material over again, and discussing it as above, I am also of the view, that the price of the land, at the relevant time, cannot be said to be more than Rs. 7,000/- per Bigha, as has been awarded by the learned Arbitrator. Therefore, this part of the award is affirmed.

Then, I take up the contention about inadequacy of the solatium and interest. Of course in Rao Narain Singh's case, it has been held, that solatium and interest are payable. However, it is no less significant to note, that against the judgment of this Court dt. 23.7.1996, rendered in S.B. Civil Writ Petition No. 3070/95, D.B. Civil Special Appeal was filed by the respondent. That writ was filed, for directing the respondents, to pay compensation, as awarded in the impugned award, and the Single Bench of this Court allowed that writ, and respondents were directed to comply with the award within three months from that date, and the Division Bench, in appeal, found, that interest and solatium cannot be paid, though the quantum of compensation

arrived at was maintained.

It may be noticed here, that the Division Bench, while deciding the appeal of Union of India, against the judgment of Single Bench dt. 23.7.1996, also took up the miscellaneous appeal, filed by the Union of India, seeking to challenge the award, which was otherwise time barred, and rejected the same. It is against this order of Division Bench, that the matter was carried to Hon'ble the Supreme Court, by both the parties, and Hon'ble the Supreme Court allowed interest, at the rate of 9% p.a. from 18.9.1989, till the date of deposit of the compensation amount in Court, or payment to the claimants, as the case may be. It is a moot question, as to whether on the face of the judgment of Hon'ble the Supreme Court, rendered in a matter, arising from the same award, and between some of the land owners, can it be said, that the appellants are entitled to solatium and interest, on the basis of the judgment in Rao Narain Singh's case.

Rao Narain Singh's judgment is of the year 1993, and rendered by the two Hon'ble Judges, while the present is a judgment rendered in 2005, and has been passed after taking into account the two subsequent judgments of Hon'ble the Supreme Court, being in Union of India Vs. Chajju Ram, reported in (2003 5 SCC-568), and Prabhu Dayal Vs. Union of India, reported in 1995 Suppl. 4 SCC-221. In that view of

the matter, I think it appropriate to follow the judgment of Hon'ble the Supreme Court dt. 7.4.2005, rendered in Civil Appeal No. 1710/2001 Girdhari & Ors Vs. Union of India, and rest at directing, that the appellants shall be entitled to interest on the compensation amount @ 9% per annum from 18.9.1989, till the date of deposit of the compensation amount in Court, or offering for payment to the claimants, whichever is later, as directed by Hon'ble the Supreme Court.

The result of the aforesaid discussion is, that all the appeals are partly allowed. The award of compensation of Rs.7000/- per Bigha is maintained, and it is held, that the appellant shall be entitled to interest @ 9% per annum on the aforesaid amount of compensation, from 18.9.1989, till the date of payment of the amount in the Court, or offer to the claimants, whichever is later. The parties are left to bear their own costs.

(N P GUPTA),J.